

**IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEBRASKA**

MICHELLE NICKLAS;	)	Case No.
JOHN ROES (1-50);	)	
JANE ROES (1-50),	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
	)	Class Action
JOE KELLY, individually	)	
And in his official capacity,	)	
As the LANCASTER	)	
COUNTY ATTORNEY; AND	)	
JOHN DOES (1-50), individually and	)	
in his/her/ their official capacity.	)	
	)	
Defendants.	)	

**CLASS ACTION COMPLAINT**

1. Plaintiff(s), by and through counsel, Chad J. Wythers, on behalf of themselves and others similarly situated, and for their Complaint against the Defendant, Lancaster County Attorney's Office, Joe Kelly, individually and in his official capacity as the Lancaster County Attorney, and John or Jane Does, individually and in his/her/their official capacities.
  
2. This is a class action lawsuit brought on behalf of individuals similarly situated against the Lancaster County Attorney's Office, Joe Kelly, individually and in his official capacity, to secure a remedy for damages to the Plaintiff(s) and other persons similarly situated whose Fifth and Fourteenth Amendment rights were violated after they were charged with

crimes in Lancaster County, paid money to enroll in a “pretrial diversions program” with the hope that his/her/their charges would be dismissed, and were subsequently denied entry after having paid money to enroll in the program, and other unlawful activities in violation of 42 U.S.C. § 1983; 42 U.S.C. 1981; the Fourteenth Amendments to the United States Constitution and the Constitution of the State of Nebraska.

### **JURISDICTION AND VENUE**

3. This action arises under the United States Constitution, particularly under the Fifth and Fourteenth Amendments, under federal law, particularly the Civil Rights Act of 1871 (42 U.S.C. § 1983), and the laws of the State of Nebraska. This honorable court has jurisdiction by virtue of 28 U.S.C. §§ 1331 and 1367.
4. Venue is founded in this court upon 28 U.S.C. § 1391 as the acts of which Plaintiff(s) complain arose in this district.

### **PARTIES**

5. Plaintiff, Michelle Nicklas, is a resident of Lancaster County, Nebraska.
6. John and Jane Roes (1-50) are unknown Plaintiffs who have similar causes of action as pled herein by the Plaintiff, Michelle Nicklas.
7. Defendant Lancaster County Attorney’s Office, hereafter referred to as “County Attorney,” is an agency of Lancaster County, Nebraska, and prosecutes felony and misdemeanor crimes under Nebraska Law for

Lancaster County, Nebraska as well as advises county agencies and defends suits brought against Lancaster County, Nebraska.

8. Defendant Joe Kelly, hereafter referred to as "Kelly," is the duly elected County Attorney for Lancaster County, Nebraska, and by serving in this professional capacity is responsible for the administration and execution of the duties of the County Attorney.
9. At all relevant times, Joe Kelly, individually and in his official capacity, had the final policy-making authority in terms of creating, adopting, implementing and/or enforcing policies in the Lancaster County Attorney's Office.
10. John and Jane Does (1-50) are unknown employees of the Lancaster County Attorney's Office who were involved in the allegations set forth herein.

#### **General Background Facts**

11. Lancaster County has several programs designed to help people charged with misdemeanor or felony crimes avoid the possibility of conviction.
12. One such program is called the Lancaster County Community Corrections Diversions Program (herein after "Diversions").
13. The Diversions Program was created and is managed by the Lancaster County Attorney through an office called Lancaster County Community Corrections.

14. The Diversions Program provides a fantastic opportunity for people charged with a crime to resolve a criminal charge without going through the trial process, and the citizens of Lancaster County are fortunate to have such opportunities provided by the Lancaster County Attorney's Office.
15. Many people who have been charged with a misdemeanor or felony have had their criminal charges dismissed completely because of the very existence of Diversions.
16. Persons charged with a misdemeanor or felony who participate in the program are required to do things such as community service, obtain a drug and alcohol evaluation, write a letter of apology, pay restitution or any other affirmative acts which are required of the program for the particular individual.
17. Attached hereto, labeled as "Exhibit A" and incorporated herein by this reference is an informational webpage – from the Lancaster County Attorney – which outlines some of the requirements of the Diversions program.
18. Attached hereto, labeled as "Exhibit B" and incorporated herein by this reference is another informational webpage – from the Lancaster County Attorney – which outlines the pretrial eligibility criteria for the diversions program.

**FACTS PARTICULAR TO THIS CASE**

19. On or about April 24, 2017, the Plaintiff, Michelle Nicklas, was charged in the County Court of Lancaster County with a class I misdemeanor, child neglect at case number CR17-5489.
20. On or about May 23, 2017, the Plaintiff, Michelle Nicklas, enrolled in the Lancaster County Community Corrections Diversions Program.
21. As part of the enrollment, the Plaintiff, Michelle Nicklas, paid a \$200 fee and signed a contract entitled "Community Corrections Diversions Program Agreement".
22. Attached hereto, labeled as "Exhibit C" and incorporated herein by this reference is a copy of the "Community Corrections Diversions Program Agreement" (hereinafter, "Agreement").
23. On May 23, 2017, the Agreement was signed by the Plaintiff, Michelle Nicklas, and an agent or employee of Diversions.
24. On May 24, 2017, a deputy Lancaster County Attorney emailed undersigned counsel an email which stated, "The county attorney's office is denying diversions to Ms. Nicklas. Please see attached letter."
25. Attached hereto, labeled as "Exhibit D" and incorporated herein by this reference is a copy of the email.
26. Attached to the email was a generic letter dated May 25, 2017 which indicated the Ms. Nicklas was not eligible for the Diversions Program.

27. The county attorney emailed the letter to undersigned counsel. The letter was not mailed or provided to Ms. Nicklas in any other manner.
28. The letter does not contain the specific reasons for the denial as required by the Diversion rules (See, Exhibit B).
29. As noted above, Ms. Nicklas paid the \$200 enrollment fee as required by the Diversions rules. (See, Exhibit C).
30. Throughout the months of May, June and July 2017, Ms. Nicklas continued to meet with the Diversions officer, who signed her Diversions agreement.
31. Nothing within the agreement executed between Ms. Nicklas and the Diversions officer indicated that Ms. Nicklas was not admitted into the program or that the county attorney could deny her entry into the program. To the contrary, the agreement specifically notes that Ms. Nicklas' participation in the program is "voluntary" and that she "may withdraw at any time." (See, Exhibit C).
32. Throughout the month of May, June and July 2017, Ms. Nicklas completed several terms of the Diversions Program as contemplated in the Agreement and as outlined in the Diversions Rules (See, Exhibit B and C).
33. Ms. Nicklas completed every term required of her as contemplated within the Agreement (See, e.g., Exhibit C):
  - a. She obeyed all laws and hasn't been convicted of any new charges;
  - b. She maintained a residence in Nebraska;

- c. She met with a staff member of Diversions regularly (in June and July, 2017);
  - d. She paid a program fee of two-hundred dollars (\$200);
  - e. She attended all court hearings;
  - f. She completed 24 hours of community service (Attached hereto, labeled as "Exhibit E" and incorporated herein by this reference is a log of the community service hours completed and approved by Diversions officer, Jessica Schmidt); and
  - g. She completed a drug and alcohol education class (Attached hereto, labeled as "Exhibit F" and incorporated herein by this reference is a letter to Diversions indicating that Ms. Nicklas completed an alcohol education class).
34. Despite meeting with Diversions employees in May, and June 2017, and participating in the Diversions Program with the knowledge of Diversions Staff, it was not until approximately July 17, 2017 that Ms. Nicklas was verbally informed by an employee of Diversions that she did not get accepted into the program.
35. Ms. Nicklas' criminal case is scheduled to be heard before a jury in November 2017.

**RELEVANT LAW**

36. Federal Code 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, ....

42 USCS § 1983 (2017).

37. In this case, the Plaintiff(s) has/have several rights that have been violated, including, but not limited to denial of due process and denial of equal protection.

**Violation of Substantive Due Process**

38. The Plaintiff(s) was/were denied substantive due process guaranteed by the United States Constitution and incorporated herein by the Fourteenth Amendment.

39. She/he/they were denied substantive due process considering she/he/they paid money to the Lancaster County Diversions Program and has/have not gotten a refund.



40. In short, the Plaintiff(s) paid money and yet is/are/were still being denied entry into the program.
41. An individual must have a constitutionally protected interest in life, liberty, or property in order for the protections of procedural due process to attach. *Singleton v. Cecil*, 176 F.3d 419, 424 (8th Cir. 1999) (en banc) (noting that "[t]he possession of a protected life, liberty, or property interest is . . . a condition precedent to any due process claim").
42. Protected property interests range from welfare—"the very means by which to live," *Goldberg v. Kelly*, 397 U.S. 254, 264, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970)—to an individual's personal items, such as a handgun and ammunition, *Walters*, 660 F.3d at 311.
43. Due process protections, however, do not attach to all property. Instead, there exists "a *de minimis* level of imposition with which the Constitution is not concerned." *Smith v. Copeland*, 87 F.3d 265, 268 (8th Cir. 1996) (quoting *Bell v. Wolfish*, 441 U.S. 520, 539 n.21, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)). "Only if we find a protected interest do we examine whether the deprivation of the protected interest was done in accordance with due process." *Forrester v. Bass*, 397 F.3d 1047, 1054 (8th Cir. 2005). Absent a protected interest, a procedural due process challenge must fail. *Id.*
44. In this case, the Plaintiff, Michelle Nicklas, (and the other Plaintiffs) has/have a property interest in money she paid to the Lancaster County Diversions Program.

45. The Plaintiff, Michelle Nicklas, also paid for the cost of a drug and alcohol evaluation at the bequest of the Diversions Program and she did volunteer work for the program.
46. Other plaintiffs may have also paid for drug and alcohol evaluations or performed volunteer work at the bequest of the Diversions Program.
47. Although she/they had/has paid money to be in the program (two-hundred dollars) (\$200), the Plaintiff(s) was/were not accepted into the program and as such, she/he/they has/have been denied procedural due process.
48. The Plaintiff in this case has not had her \$200 refunded back to her. Lancaster County and the Defendants, still have her money.
49. Other Plaintiffs may not have their money back.

#### **Procedural Due Process**

50. The Plaintiff(s) was/were also denied procedural due process as guaranteed by the United States Constitution and incorporated by the Fourteenth Amendment.
51. As noted above, the rules provide that if a person is denied entry into the Diversions Program, he/she will receive an individualized determination to the reasons "why" the person was denied.
52. As indicated previously, the letter provided to the Plaintiff, Michelle Nicklas, does not contain the specific reasons for the denial as required by the Diversion rules (See, Exhibit B, D).
53. The failure to provide particularized reasons as required by the rules denies the Plaintiff(s) procedural due process.

**Equal Protection Claim**

- 54. Many people have gotten cited or arrested for crimes similar to the one(s) that the Plaintiff(s) was/were charged with.
- 55. Many of those same people have been admitted into the Diversions Program.
- 56. Despite the fact that other similarly situated persons have gotten into the Diversions Program, the Plaintiff, Michelle Nicklas, was supposedly denied entry.
- 57. Other Plaintiffs have been denied entry into the Diversions Program even though other similarly situated people were admitted into the Diversions Program.

**Official Policy and Custom**

- 58. A local governmental body cannot be found liable under § 1983 on a *respondeat superior* theory; liability may be imposed only if the plaintiff establishes that his injuries were inflicted pursuant to an official county policy or custom. See *Monell*, 436 U.S. at 690-94. See, *Soltész v. Rushmore Plaza Civic Ctr.*, 847 F.3d 941 (8th Cir. 2017) ( "[M]unicipal liability under § 1983 attaches where . . . a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Pembaur*, 475 U.S. at 483. Thus a single decision by a municipal official can constitute official policy. *Bolderson v. City of Wentzville*, 840 F.3d 982, 985 (8<sup>th</sup> Cir. 2016). But "liability attaches only

were the decision-maker possesses final authority to establish municipal policy with respect to the action ordered. *Id.*

59. "Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law." *Connick v. Thompson*, 131 S. Ct. 1350, 1359 (2011).
60. A policy "promulgated, adopted, or ratified by a local governmental entity's legislative body unquestionably satisfies *Monell's* policy requirement." *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1443 (9th Cir. 1989), *overruled on other grounds by Bull v. City & County of San Francisco*, 595 F.3d 964 (9th Cir. 2010) (en banc).
61. In this case, Defendant(s), individually and/or collectively, has/have engaged in an official policy and/or custom (e.g., a deliberate course of action) to violate the constitutional rights of the Plaintiff, Michelle Nicklas, and other similarly situated Plaintiffs by taking money from the Plaintiffs, depositing the money into the Lancaster County Treasury and then refusing to allow the Plaintiffs the benefits for which they paid money (e.g., entry into the Lancaster County Diversions Program).
62. Even if the Defendant(s) was/were to argue there was no official policy, a Plaintiff may establish liability upon a showing that there is a permanent and well-settled practice which gave rise to the alleged constitutional violation. See *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988).

63. Finally, Defendants may argue they didn't intend to violate the constitutional rights of the Plaintiff or every other person applying to the Lancaster County Diversions program; however, "[Section] 1983 . . . contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right." *Daniels v. Williams*, 474 U.S. 327, 329-30 (1986).

### Causation

64. Causation issues in § 1983 actions are generally resolved according to common-law tort principles. See, e.g., *Martinez v. California*, 444 U.S. 277, 100 S. Ct. 553, 62 L. Ed. 2d 481 (1980) (citing *Grimm v. Arizona Bd. of Pardons & Paroles*, 115 Ariz. 260, 564 P.2d 1227 (1977), and *Palsgraf v. Long Island R. R. Co.*, 248 N.Y. 339, 162 N.E. 99 (1928)); *Ricketts v. City of Columbia, Missouri*, 36 F.3d 775 (8th Cir. 1994).
65. As a general matter, a proximate cause is defined as, "that cause which, in a natural and continuous sequence, without any efficient, intervening cause, produces the injury, and without which the injury would not have occurred. *Haselhorst v. State*, 240 Neb. 891, 899, 485 N.W.2d 180, 187 (1992).
66. So, ordinarily, a plaintiff must meet three basic requirements in establishing proximate cause: (1) that without the [misconduct], the injury would not have occurred, commonly known as the "but for" rule; (2) that the injury was a natural and probable result of the [misconduct]; and (3)

that there was no efficient intervening cause. *Amanda C. v. Case*, 275 Neb. 757, 749 N.W.2d 429 (2008).

67. In this case, "but for" the unlawful and unconstitutional actions of the Defendants, the Plaintiff(s) in this would not have paid money to the Lancaster County Diversions Program, they would not have obtained drug and alcohol evaluations, and they would not have performed volunteer work in the local community.
68. The injury (the loss of money and the inability to have her charges dismissed) was a natural and probable result of the misconduct by the Defendants.
69. There was no intervening cause.

#### **Eleventh Amendment Immunity**

70. Under the Supremacy Clause of the United States Constitution, state laws or actions violating federal law are invalid. U.S. Const. art. VI. See *Shaw v. Delta Air Lines*, 463 U.S. 85, 96 n.14 (1983).
71. Yet, the Eleventh Amendment of the Constitution provides states with immunity from private suits.
72. In 1974, the Supreme Court held in a case involving welfare rights that injunctive and declaratory relief against state officials does not violate the Eleventh Amendment, but that the Constitution prohibits retroactive monetary damages. *Edelman v. Jordan*, 415 U.S. 651 (1974).

73. Subsequent cases have reaffirmed the availability of injunctive relief against state officials for violations of safety net and civil rights statutes.
74. Under *Ex parte Young*, private parties can sue state officials in their *official capacity* to enforce federal laws and regulations, but only for prospective injunctive and declaratory relief. Accordingly, there must be an ongoing violation of federal law to support prospective relief. Such relief may include notice to the plaintiff class of the availability of remedies under state law.
75. No damages are recoverable in *Ex parte Young* suits, but prospective relief may require the incidental expenditure of state funds.
76. State officials may be sued for damages in their *individual capacity* for violations of federal constitutional or statutory rights committed in the course of official duties but are entitled to claim qualified immunity. Qualified immunity bars recovery insofar as the official's conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known.
77. The Supreme Court has set forth a two-part analysis for resolving government officials' qualified immunity claims. See *Saucier v. Katz*, 533 U.S. 194, 201 (2001), *overruled in part on other grounds by Pearson v. Callahan*, 555 U.S. 223, 236 (2009).
  - a. First, the court must consider whether the facts "[t]aken in the light most favorable to the party asserting the injury . . . show [that] the [defendant's] conduct violated a constitutional right[.]" *Saucier*, 533 U.S. at 201; see also *Scott v. Harris*, 550 U.S. 372, 377 (2007);

*Brosseau v. Haugen*, 543 U.S. 194, 197 (2004) (per curiam); *Hope v. Pelzer*, 536 U.S. 730, 736 (2002);

- b. Second, the court must determine whether the right was clearly established at the time of the alleged violation. *Saucier*, 533 U.S. at 201; *Scott*, 550 U.S. at 377; *Brosseau*, 543 U.S. at 199-201; *Hope*, 536 U.S. at 739.

- 78. In this case, there was certainly an established constitutional due process and equal protection right for Ms. Nicklas (and other plaintiffs) and the right was clearly established at the time of the violation.

#### **FIRST CAUSE OF ACTION – DECLARATORY JUDGMENT**

- 79. Plaintiff incorporates paragraphs 1 – 78 of Plaintiff's complaint herein by reference.
- 80. There exists a contract between Plaintiff(s) and Defendants. See attached Exhibit C. All the essential elements of a contract, namely offer, acceptance, and consideration, are present, making it a valid contract.
- 81. Other similarly situated Plaintiffs also possessed a valid contract.
- 82. Legal Rights. Plaintiff(s) has/have fulfilled her/his/their portion of the contract and is therefore entitled to have it declared that she/he/they has/have done her/his/their part.
- 83. Relief. Under *Ex parte Young*, private parties can sue state officials in their *official capacity* to enforce federal laws and regulations, but only for prospective injunctive and declaratory relief.



84. Plaintiff(s) is/are entitled to a Declaratory Judgment stating that there exists a valid contract between her/him/them and the Defendants and that she/he/they has/have performed all of her/his/their obligations pursuant to said contract OR declaring that the Plaintiff(s) is/are, in fact, enrolled in the Diversions Program.

**SECOND CAUSE OF ACTION – INJUNCTIVE RELIEF**

85. Plaintiff incorporates paragraphs 1 – 84 of Plaintiff's complaint herein by reference.
86. Elements. As has been shown, a binding legal contract exists between Plaintiff(s) and Defendants, namely that in exchange for Plaintiff(s) admission into Diversions, Defendants would dismiss the criminal case CR17-5489 (or each of the respective Defendants' criminal cases) in the County Court of Lancaster County, Nebraska. The facts of the instant case show that this/the contract(s) is/are definite and certain in its/their terms, mutual in obligation, and free from unfairness, fraud, or overreaching. The facts also show that the remedy at law is inadequate and specific performance will not be inequitable or unjust.
87. No Adequate Remedy at Law. Plaintiff(s) has/have no adequate remedy at law as no amount of money damages awarded could compensate her/him/them for having a criminal conviction that will hurt her/his/their future business opportunities and destroy her/his/their reputation in the community. Furthermore, no amount of money damages awarded could compensate her/him/them for

possibility having to spend time in jail (for crimes in which imprisonment is a possibility).

88. Specific Performance Will Not Be Inequitable or Unjust. An order of specific performance would not be inequitable or unjust in the instant case as the Defendants will not suffer a monetary harm or loss of reputation and will simply be complying with their contractual obligations and own policy regarding Diversions.
89. Relief. Therefore, Plaintiff(s) is/are entitled to an order compelling Defendants to specifically perform their contractual obligations and dismiss the criminal case CR17-5489 in the County Court of Lancaster County, Nebraska (or any other pending criminal case for the other plaintiffs).

**Class Action Allegations**

90. The named Plaintiff(s) bring(s) this action, on behalf of himself, herself, and all others similarly situated, to assert the claims alleged in this Complaint on a common basis.
91. The class would be made-up of all persons who have been denied entry into the Lancaster County Diversions Program without receiving the proper procedural or substantive due process and/or equal protection guaranteed to them by the United States Constitution and the Nebraska Constitution.

92. A class action is a superior means, and the only practicable means, by which the named Plaintiff(s), and unknown Class Members, can challenge Defendants' ongoing constitutional violations.
93. This action is brought, and may properly be maintained, as a Class action pursuant to Rule 23(a)(1)–(4) and Rule 23(b)(2) of the Federal Rules of Civil Procedure.
94. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of those provisions.
95. Plaintiff proposes one Class seeking declaratory and injunctive relief. The Declaratory and Injunctive Class is defined as: all applicants to the Lancaster County Diversions program who paid money but did not get into the program and/or did not receive particularized reasons he or she was not accepted into the program (as required by the rules).

**Commonality — Fed. R. Civ. P. 23(a)(2)**

96. The relief sought is common to all Class Members, and common questions of law and fact exist as to all Class Members. The named Plaintiff seeks relief concerning whether the unconstitutional actions of the Defendants violate the rights of the Class Members and relief mandating that Defendants stop the unconstitutional actions in the future.
97. These common legal and factual questions arise from one set of policies and practices: Defendants' unconstitutional acceptance of money and subsequent

denial of applicants into the Diversions Program. The material components of the facts do not vary from Class Member to Class Member, and the resolution of these legal and factual issues will determine whether all Class Members are entitled to the relief they seek. Among the most important, but not the only, common questions of fact are:

- a. Do the Defendants, individually and/or collectively, have a policy and practice of failing to follow their own rules when denying a person entry into the program?
- b. Do the Defendants, individually and/or collectively, have a policy and practice of collecting money from persons who want to be in the Diversions Program and then failing to return the money if the person is not accepted?

**Typicality – Fed. R. Civ. P. 23(a)(3)**

98. Among the most important common question of law are:
  - a. Does the Fifth Amendment and the Fourteenth Amendment prohibit the Defendants, individually and/or collectively, from accepting money from people who want to be in the Diversions Program?
  - b. Does the Fifth Amendment and the Fourteen Amendment prohibit the Defendants, individually and/or collectively, from denying people into the Diversions Program without any particularized basis for the denial?
99. The named Plaintiff's claims are typical of the other Class Members' claims, and he/she/they has/have the same interests in this case as all other Class Members.

100. Each Class Member is a person whose Fifth and Fourteenth Amendment rights were violated either by paying money and then being denied entry into the program and/or being denied entry without any particularized basis for the denial as required by the Defendant's own rules.
101. The answer to whether the Defendant's actions are unconstitutional will determine the claims of the named Plaintiff and every other Class Member.
102. If the named Plaintiff succeeds in the claim that Defendants' policies and practices concerning violates his or her or their constitutional rights, that ruling will likewise benefit every other Class Member.

**Adequacy — Fed. R. Civ. P. 23(a)(4)**

103. The named Plaintiff(s) is/are (an) adequate representative of the Class because his/her/their interest in the vindication of the legal claims that he/she/they raise(s) is entirely aligned with the interests of the other Class Members, who each have the same basic constitutional claims. He/she/they is/are a member of the Class, and his/her/their interests coincide with and are not antagonist to those of the other Class Members.
104. There are no known conflicts of interest among Class Members, all of whom have a similar interest in vindicating their constitutional rights.
105. Plaintiff(s) are represented by Chad Wythers who has experience in litigating complex matters in federal court and extensive knowledge of both the details of Defendants' scheme and the relevant constitutional and statutory law.

106. Class counsel has a detailed understanding of state law and practices as they relate to federal constitutional requirements.
107. As a result, counsel has devoted enormous time and resources becoming intimately familiar with Defendants' system and with the relevant state and federal laws.

**Rule 23(b)(2)**

108. Class action status is appropriate because Defendants have acted in the same unconstitutional manner with respect to all Class Members.
109. The Class therefore seeks declaratory and injunctive relief to enjoin Defendants from continuing to violate the rights of applicants to the Lancaster County Diversions Program.
110. Because the putative Class challenges Defendants' system as unconstitutional through declaratory and injunctive relief that would apply the same relief to every Class Member, Rule 23(b)(2) certification is appropriate and necessary.
111. Injunctive relief compelling Defendants to comply with these constitutional rights will similarly protect each Class Member from being subjected to Defendants' unlawful policies and practices. A declaration and injunction will provide relief to every Class Member. Therefore, declaratory and injunctive relief with respect to the Class as a whole is appropriate.
112. Plaintiff(s) seek the following relief and hereby demand a jury in this cause for all matters so appropriate.

**DAMAGES**

113. As a direct and proximate result of said violation of Plaintiffs' constitutional and statutory rights, Plaintiff(s) were unlawfully deprived of substantive and procedural due process and equal protection under the laws, and they have suffered financial harm, humiliation, embarrassment, mental and emotional anguish and other harm.

**JURY TRIAL DEMAND**

114. Plaintiff(s) respectfully demand a trial by jury on all counts.

WHEREFORE, Plaintiff(s) prays as follows:

- A. That this Court issue an order Declaring the Plaintiff(s) to be enrolled and admitted into the Diversions Program with all benefits and rights given to a person who has been accepted into in the Diversions Program, and/or;
- B. That this Court enter an order compelling Defendants to perform their legal and/or contractual obligations and/or ministerial duties, to wit: That Plaintiff(s) be admitted into the Diversions Program with all benefits and rights given to a person who has been accepted into the Diversions Program, and/or;
- C. That this Court enter an ORDER estopping the Defendant's from denying the Plaintiff(s) entry into the Diversions Program after

she/he/they has/have paid, enrolled and performed nearly all of the requirements of the contract, and/or;

- D. That this Court enter an ORDER requiring the Defendants to specifically perform their legal duty, to wit: that Plaintiff be admitted into the Diversions Program with all benefits and rights given to a person who has been accepted into the Diversions Program and/or dismiss the criminal charges considering the Plaintiff has completed all of the requirements of the Diversions Program, and/or;
- E. For attorney's fees and costs as permitted by law and in the Court's discretion, and/or;
- F. Plaintiffs seek nominal damages in the event Plaintiffs are unable to prove compensatory damages.
- G. Plaintiffs seek punitive damages against any defendant for which such relief is legally available.
- H. Plaintiffs seek any other relief this Court deems just and proper.

Respectfully submitted,  
Michelle Nicklas, Plaintiff.

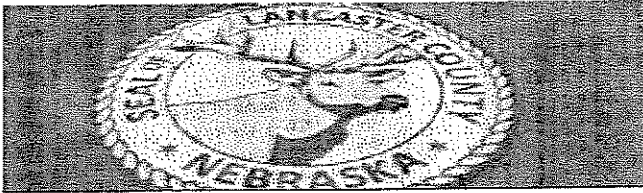
/s/ Chad J. Wythers  
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7/21/2017

Lancaster County Attorney's Office - Adult PreTrial Diversion



County Attorney's Office

## County Attorney's Office Adult PreTrial Diversion

Pre Trial Eligibility Criteria    Waiver of speedy trial and appearance

### Frequently Asked Questions

**Q: Where are you located and what are your office hours?**

A: Community Corrections, 605 South 10th Street, M-F 8:00 am - 5:00 pm

**Q: How do I know if I am eligible for the Diversion Program?**

A: Call for information (402-441-3600) or review the eligibility guidelines section on this website

**Q: Can I participate in Adult Diversion more than one time?**

A: No you may only participate in one adult Diversion program regardless of where it was (any other use of a Diversion program in another State or County will make you ineligible).

**Q: Can I participate in Adult Diversion if I already went through Juvenile Diversion?**

A: Yes, they are 2 separate programs. The use of a Juvenile Diversion program will not affect your eligibility. Juvenile convictions will not affect eligibility either.

**Q: Do I have to hire an attorney to participate in Diversion?**

A: No.

**Q: How Do I apply for the Diversion Program?**

A: Call 402-441-3600 M-F between 8:00 am and 5:00 pm and have your ticket handy when calling.

**Q: Do traffic convictions or parking tickets affect my eligibility?**

A: No.

**Q: If I live in another state or county can my Diversion be transferred there?**

A: No. If you got the ticket in Lancaster County you must participate in this program only, although some program requirements can be completed outside of Lincoln with prior approval by Diversion staff.

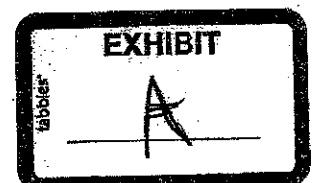
**Q: What are the benefits of completing a Diversion program?**

A: If you successfully complete the program, you will not have a conviction on your adult record and you will not face punishment through the court system.

**Q: What are typical requirements of the program?**

A: Fees, Community Service at an approved non-profit agency, education classes, monthly contact with Diversion case managers, restitution, etc. Requirements depend on many different factors. Call Diversion for more information.

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Effective January 1, 2013

**LANCASTER COUNTY ADULT DIVERSION PROGRAM  
ELIGIBILITY CRITERIA AND PROGRAM CONDITIONS****GENERAL CRITERIA**

Applicants must be charged as an adult in County or District Court. Youthful applicants under jurisdiction of Juvenile Court are not eligible for the Program. Minimum eligibility age is 17 years of age.

Applicants must complete Constitutional Rights Questionnaire and waiver of rights.

No applicant is allowed to enter and participate in adult, pretrial diversion more than one time. Applicants who are unfavorably terminated from pretrial diversion are not eligible to enter the program at any time subsequent.

Prior Criminal Record

Applicants with a prior felony conviction are ineligible. At the discretion of the County/City Attorney, and if otherwise eligible, an applicant may be considered for the Program if he or she has received an official pardon for a previous felony conviction. Applicants with more than two misdemeanor convictions are not eligible for the Program. This would include convictions for class III and class W misdemeanors and above and comparable city ordinances. Expungement or a set aside of a prior conviction does not make a person eligible if otherwise ineligible due to prior conviction record.

Juvenile dispositions are not considered as convictions for purposes of this section.

The County/City Attorney reserves the right to reject applicants previously charged with a felony which was reduced to a misdemeanor.

Applicants charged with a felony will not be considered for Pretrial Diversion unless they apply before the matter is bound over to district court. However Juveniles may apply after their Juvenile transfer hearing.

Eligible Felony Offenses

Acquire Controlled Substance by Fraud  
Arson, Third Degree  
Burglary  
Criminal Mischief  
Delivery of a Controlled Substance (Incidental delivery)  
Forgery  
Fraud by use of a Computer  
Insufficient Fund Checks  
Insurance Fraud  
Manufacturing of Marijuana (Personal use)  
Possession of Controlled Substance (Including possession of marijuana weighing more than 1 pound)  
Possession of forged instruments/devices  
Sales Tax Violation  
Theft  
Unauthorized Use of Financial Transaction Devices

Ineligible Felony Offenses

Abuse of a Vulnerable Adult  
All Assaults involving Officers  
Arson First and Second Degree  
Assault First and Second Degree  
Bribery  
Child Abuse  
Child Pornography  
Defacing a Firearm  
Delivery or Possession with Intent to Deliver a Controlled Substance (Including marijuana)  
Driving Under the Influence  
Enticing a Child with an electronic device  
Failure to Appear  
False Imprisonment  
Gambling  
Incest



Kidnapping  
Manslaughter  
Manufacturing of Controlled Substances (Except for Marijuana for personal use)  
Motor Vehicle Homicide  
Murder  
Pandering  
Perjury  
Possession of Deadly Weapon by a Felon  
Possession of a Defaced Firearm  
Possession of Short Shotgun, Machine Gun or Short Rifle  
Possession of a Stolen Firearm  
Refusal to Take Chemical Test  
Resisting Arrest  
Robbery  
Sexual Assault  
Stalking  
Strangulation  
Tamper with witness, evidence, jury  
Unlawful Possession, Sale or Use of Explosives  
Use of Explosives to Commit a Felony or to Kill or Injure Others  
Use of a Deadly Weapon to Commit a Felony  
Violation of a Protection Order  
Violation of Sex Offender Registration Act

Eligible Misdemeanor and Infraction Offenses

Alter Price Tag  
Altered Identification  
Arson Third Degree  
Conceal Merchandise  
Criminal Mischief  
Disturbing the Peace  
Enter Motor Vehicle Without Permission  
Failure to Comply  
False Statement/Unemployment Benefits  
Forgery  
Fraud  
Fraud by use of Computer  
Hinder Arrest (L.M.C. §9.08.020)  
Inhaling or Drinking Certain Intoxicating Substances  
Inmate Disorderly House  
Insufficient Fund Check  
Insurance Fraud  
Maintain Disorderly House  
Minor Attempt to Purchase Alcohol  
Minor in Possession Alcohol  
Minor Misrepresent Age  
Obstruct Government Operations  
Physical Contact on Licensed Premises  
Possession Drug Paraphernalia  
Possession of Marijuana  
Possession Stolen Property  
Refuse to Comply  
Sell Alcohol Without License  
Sell Tobacco to Minor  
Steal Goods  
Theft  
Trespass  
Unauthorized Use of Financial Transaction Device  
Unauthorized Use of Motor Vehicle  
Vandalism  
Violation of Lottery

Eligible Misdemeanors on a Case-by-Case Basis

Assault  
 Carry Concealed Weapon  
 Child Abuse & Neglect  
 Contribute Delinquency of Minor  
 Domestic Assault  
 False Information  
 Intimidation by Phone  
 Sexual Assault

Ineligible Misdemeanor Offenses

Accountability & Disclosure Violations  
 Boating under the influence  
 Debauching a Minor  
 Driving Under the Influence  
 Enticing a Child into a Vehicle  
 Fleeing to avoid arrest  
 Gambling  
 Game Law Violations  
 Keeping a Place of Prostitution  
 Motor Vehicle Homicide  
 Offenses Against or Involving Animals  
 Pornography  
 Procuring Alcohol for Minors  
 Prostitution  
 Public Indecency  
 Refusal to Take Chemical Test  
 Resist Arrest (State statute and L.M.C. §9.08.030)  
 Traffic Offenses  
 Violation of Protection Order

Generally, any offense not specifically included herein as an Eligible Offense is not eligible for the Program. The County/City Attorney reserves the right to consider each case on an individual basis to determine eligibility. An offense which constitutes a conspiracy, accessory to felony, attempt, or aiding consummation of a felony where the underlying felony is not an eligible offense is not eligible for the Program.

Applicants are not eligible for Pretrial Diversion if any charges in the complaint are, for any reason, ineligible offenses.

Multiple charges are eligible only if they arise out of one incident involving one victim and all charges are otherwise eligible.

Additional Qualifications as to Offense

Offenses that constitute violations of a position of trust whether public or private are not eligible. This includes any person who stands in a fiduciary relationship to the victim, including a trustee, an attorney or a certified public accountant. Offenses that constitute a violation of a professional duty or licensing rule, regulation, or requirement are not eligible. Examples of individuals who are not eligible include: an attorney who takes from a trust account, a physician or a nurse or other health professional who, because of his/her profession, has access to controlled substances and acquires those substances illegally, a pharmacist who illegally dispenses medication, a person who engages in a profession without a license required by law or during suspension of said license, or a professional who unlawfully prescribes or provides unneeded services. The foregoing are examples of violations of a professional duty or licensing rule, regulation, or requirement and are not intended to be exhaustive of such violations. Public employees whose violation brings into question governmental integrity are not eligible. Violations which constitute consumer fraud or election fraud are not eligible.

"Incidental delivery" for the purposes of delivery of a controlled substance shall mean a delivery of a small amount of marijuana or any controlled substance prescribed to the applicant, with little or no profit to the applicant.

\* Delivering the controlled substances to another for no cost is an indicator of an incidental delivery.

\* The applicant's "total stock" of the controlled substance, aside from that portion delivered, shall be considered in determining if a delivery was incidental.

\* No delivery of a controlled substance to a person under 18 years of age shall be considered an incidental delivery.

\* No delivery of a controlled substance shall be considered "incidental" if the controlled substance contributed to the death or serious injury of the person who ingested the substance.

\* The number and to whom the deliveries are made will also be considered.

Offenses, including attempts, that involve theft, damage, fraud, forgery, bad checks, criminal mischief or other losses to victims in which the total dollar amount is in excess of \$10,000 are not eligible for the Program. No statute of limitations applies to this determination.

#### **OTHER CRITERIA RELATING TO DIVERSION**

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##### Seriousness of Offense and Established Pattern of Anti-Social Behavior

In addition to the above criteria, each felony and misdemeanor case is considered on a case-by-case basis as to the seriousness of the offense and established pattern of anti-social behavior to determine eligibility.

Factors to be considered to determine seriousness of offense and established pattern of anti-social behavior include, but are not limited to, the following:

- The number of incidents or repeat occurrences;
- Length of time over which offenses occurred;
- Number of victims involved;
- Potential or actual harm to victims even if unintentional;
- Likelihood of further offenses as a result of diversion offense;
- Monetary amount of offense;
- Whether offense involves business or consumer fraud;
- Juvenile record and continuing criminal behavior will likely eliminate an individual as a result of prior convictions;
- Number of prior arrests, citations, police and/or juvenile court referrals for criminal matters;
- Repeated prior offenses of the same nature;
- Prior institutionalization for criminal offenses;
- Length of time between diversion offense and prior offenses;
- Applicant is the subject of an on-going investigation.

##### Demonstrated Ties to Community

This section is interpreted liberally in favor of eligibility. The main consideration is whether the applicant is willing and able to meet the minimum reporting requirements and if the person can fulfill program requirements in the area where they reside.

No minimum length of residency in Lancaster County is required.

Felony participants may not transfer outside of direct supervision of Diversion Services during the first four months of the Program without approval.

##### Responsibility for offense

To be eligible for the Program, the applicant must acknowledge that the evidence available could likely result in conviction upon prosecution. An applicant's initial or subsequent plea in court is not to be considered for Program eligibility.

The applicant must accept responsibility for the offense to the extent that they agree to comply with all Program terms and conditions.

An applicant may plead not guilty and reserve the right to a trial if not accepted into the Program or if later dropped from the Program.

##### Ability to Pay Restitution/Program Fee

Inability to make full restitution for losses due victims or pay program fees does not eliminate an applicant from further consideration. Partial restitution may be waived.

Some or all of an applicant's program fee may be waived in the event of extreme financial hardship.

#### Other Eligibility Guidelines

Applicants with an outstanding warrant are not eligible for diversion.

Any and all pending charges that may effect eligibility must be resolved prior to entering the Program.

Applicants on probation from any court including juvenile court are not eligible.

#### **PROGRAM TERMS AND CONDITIONS**

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Typical terms and conditions may include:

##### *Felony Diversions*

Program term of one year or more but never to exceed 30 months from the date of the offense.

Community Service of 60-100 hours.

Substance abuse evaluation if alcohol or drugs involved in offense and follow treatment recommendations.

Extended drug education program of 10 hours.

Controlled substance diversions agree to search and seizure of residence, vehicles, and person without warrant by authorized law enforcement personnel upon advance approval of County Attorney.

Written or verbal apology to victims at discretion of Program.

Controlled substance cases must submit to a urinalysis within 24 hours of request by Program and pay for testing.

There will be no extensions of the program terms without approval from the County Attorney's Office.

##### *Misdemeanor Diversions*

Six month to one year terms depending on the offense, restitution and other factors.

One year term for all crimes against the person unless waived by administrator.

Written or verbal apology to victims at discretion of Program.

Controlled substance diversions must agree to search and seizure of person, vehicles, personal property and residence without warrant by law enforcement personnel upon advance approval of County/City Attorney.

Additional community service hours may be required for individuals who are unable to pay civil damages.

Substance abuse evaluations if drugs or alcohol involved in offense and follow treatment recommendations.

Community Service of 24-100 hours depending on seriousness of offense unless waived by Program personnel.

There will be no extensions of the program terms without approval from the County/City Attorney's Office.

#### **ADMINISTRATIVE REVIEW GUIDELINES**

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Applicants that are otherwise eligible who are denied the Program will be notified in writing by either the County/City Attorney, or DIVERSION SERVICES of the decision and the reasons for denial.

The applicant or his attorney must file written notice with the County/City Attorney and DIVERSION SERVICES to request an administrative review of the decision. The County/City Attorney will schedule a hearing within three weeks of the request.

Administrative reviews are heard by local attorneys in private practice who have been appointed as hearing officers by the Lincoln Bar Association and have volunteered their services.



From: 402 441 3604

07/18/2017 15:43

#468 P.002/004

County

**Community Corrections Diversion Program Agreement**

I, Michelle Nicklas, may be prosecuted for the following misdemeanor criminal offense(s):

Child Neglect

I have read and signed a Constitutional Rights Questionnaire. To earn a dismissal of the above charges I agree to do the following if accepted into the Program:

Obey all local, state and federal laws. Conviction on new charges will result in termination.

Maintain residence in Nebraska unless approved by the Program and obtain approval for travel outside the area if trip exceeds seven days.

Meet with a staff member as requested. Loss of monthly contact could result in termination.

Keep Community Corrections Diversion Services advised at all times of current mailing address, residence, telephone, employment, school and all program conditions.

Notify Community Corrections Diversion Services within 48 hours of any arrests, citations, (tickets) and court appearances.

Pay a program fee of \$200 in monthly payments of \$40 beginning June. This must be paid by cash, money order or card. All payments made by debit or credit card will be charged a processing fee.

Program fees are not refundable for any reason. An extension fee will be charged if program term has to be extended more than 30 days.

Must attend any pending court dates and pay all court costs.

Complete 24 hours of community service.

Complete Extended Drug/Alcohol education

Complete Parenting class

I understand that I am not required to attend any class, group or other service offered by Community Corrections Diversion Services. I may obtain these services from another approved source if I so choose.

5-23-17

I agree to abide by this agreement from 5/23/17 to 4/23/17. The term of this agreement may be extended only if approved by Community Corrections Diversion Services. This Agreement may not be changed or amended without approval of Community Corrections Diversion Services. Any changes will be added to the original copy of this agreement, initialed and dated by client.

I understand that the Program is voluntary and that I may withdraw at any time. If I abide by the Program conditions, criminal charges will not be refilled for the above offense(s). Failure to complete all program conditions will result in termination from the Program and prosecution.

If arrested or cited for a criminal offense alleged to have occurred after 5/23/17, I will not be able to complete the Program until the charges have been resolved. I will be terminated from the Program upon conviction or bound over to District Court if charged with a felony. The prosecutor also reserves the right to terminate me from the Program if any new charges remain pending for 60 days without disposition.

I have read and understand all terms and conditions of this Program Agreement. I agree to abide by this Agreement to earn a dismissal of charges.

Client Michelle NicklasDate 5/23/17Community Corrections Diversion Services [Signature]Date 5/23/17

County/City Attorney \_\_\_\_\_

Date 1/1

DOB: 11/4/85

SF187014

CR17-5489





The decision of the Hearing officer is advisory and is not binding on the County/City Attorney. The purpose of the hearing is limited to determining whether the County/City Attorney's decision was arbitrary and capricious.

Attorneys requesting hearings are asked to contact Diversion Services and request a copy of the rules of procedure for the Administrative Hearings at the same time they request an Administrative Review.

#### Confidentiality

Any criminal justice record information which pertains to anyone who is being screened or has been accepted into the Program or who has been in the Program at any time in the past, will be made available to the public in accordance with the Security, Privacy, and Dissemination of Criminal History Information Act found at Neb. Rev. Stat. §29-3501, et. al. This includes the following information:

- Name of Applicant
- Date of Arrest
- Intake Date
- Charges Filed in Court
- Court Disposition
- Program Recommendation to Prosecutor
- County/City Attorney's Decision and Date
- Program Outcome Status

The Program routinely provides this information to the appropriate criminal justice agencies to ensure that all criminal record information applicable to Program participants is accurate and complete.

All other information, except as provided below, that relates to the individual participant is considered to be confidential and will not be divulged to the general public unless the participant expressly authorizes release of otherwise confidential information. Information recorded on the following Program forms and reports will be considered confidential:

- Constitutional Rights Questionnaire
- Intake Form
- Acceptance/Rejection Report
- Termination/Completion Report
- Client case notes

Any person who participates in Pre-Trial Diversion waives any right to confidentiality with respect to the Program Agreement which sets forth the conditions of the Program.

Information received from participants or other persons that pertains to matters of child abuse, bodily harm or life-threatening circumstances will not be held in confidence. Also, if information becomes known to Program personnel that a participant is currently involved in criminal acts, or intends to do so at some future time, it will be reported to the County/City Attorney. All staff members are expected to report incidents of this nature to the County/City Attorney for whatever action deemed appropriate by that office.

#### Unfavorable Termination

The County/City Attorney shall not dismiss a case until the participant has paid all cost associated with entry into the program.

Participants may be unfavorably terminated from the Program for noncompliance with the conditions stated in individual program agreements. Participants are expected to fulfill all contract terms. Specific conditions on the program agreement may not be modified without prior approval by the Program.

Except as otherwise provided above, no one will be terminated without due process. If a participant fails to initiate action or make adequate progress on his or her contract, the counselor will schedule a Staffing with the Director for the purpose of giving formal notice to the person that he or she is being considered for unfavorable termination. No one will be terminated without a Staffing and given an opportunity to complete the Program. The only exception to this policy is when someone has been convicted of a new in-program offense committed before a Staffing can be held and does not deny the offense. Participants who do not attend the Staffing due to loss of contact also will be terminated without being present at this hearing.

At the hearing, specific conditions and deadlines will be established for the person to demonstrate that he intends to fulfill his program agreement obligations. These conditions will be provided to the person by letter within one week of the Staffing. If the person fails to adhere to the conditions specified at the Staffing, notification will be made by letter to the last known address that they are being recommended for termination.

Any Diversion Program participant who wishes to contest or dispute the reasons for their termination must request a Fact Hearing within 10 days after receipt of the notice of termination. The sole purpose of a Fact Hearing is for the person to provide evidence or other information that he or she has complied with the conditions established at the Staffing.

Any participant convicted on a new offense committed after the date of intake for the diversion offense will be automatically terminated. Furthermore, any participant who is convicted of an offense committed prior to the date of intake, will be automatically terminated if that conviction would have made them ineligible for the program.

An individual may also be terminated from the Program at the discretion of the County/City Attorney if in-program charges are pending more than 60 days or if bound over to District Court for arraignment on felony charges.

#### Restitution

Participants will be required to make fair restitution to all victims of their offenses whenever possible. It is recognized that in some circumstances, the defendant is unable to repay the full amount of losses incurred due to the diversion offense. No one shall be denied the Program solely on his or her inability to make financial restitution. Partial restitution may be required but payment plans shall not extend beyond the term of the program participation.

It is the responsibility of the Program counselors to determine the amount of losses and to arrange for an appropriate repayment schedule. In the event a determination cannot readily be made as to the amount of restitution due, the County/City Attorney assigned as liaison to the Program will review the available information and decide upon an amount to be repaid to satisfy the conditions of participation.

To determine the amount of restitution due, these factors will be considered: (1) the amount of loss specified in law enforcement agency reports; (2) the amount of loss provable in court or established in a civil action for damages and (3) the amounts admitted to by the defendants;

In the event of multiple defendants, each shall be required to pay equal shares, regardless of the distribution of proceeds or amount of damage done, unless the defendants mutually agree to other arrangements.

Damages sustained to property are included in restitution requirements.

Storage costs and rewards, as a general policy, will not be included in restitution amount to be paid.

The Program will solicit from victims a statement of losses incurred as a result of the diversion offense, unless the police reports clearly indicate that all property and other proceeds obtained by the defendants have been returned to the victim(s).

If losses are covered by insurance, payments will be made first to the victim for any deductible paid, and second to the insurance company that paid the claim.

The Program reserves the right to request two estimates for repairs and/or losses if, in the counselor's judgment, the amount of loss claimed is believed to be excessive or if there is a substantial disparity between the defendants and the victim(s) as to the amount of loss.

#### For information contact:

Community Corrections  
605 South 10th Street  
Lincoln, NE 68508  
(402)441-3600

**Chad J. Wythers**

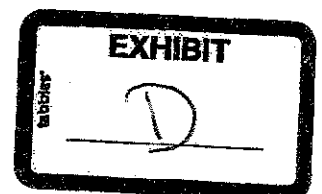
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**From:** Jeremy P. Lavene <JLavene@lancaster.ne.gov>  
**Sent:** Thursday, May 25, 2017 9:30 AM  
**To:** Chad J. Wythers  
**Subject:** Michelle Nicklas, CR17-5489  
**Attachments:** Diversion Denial Letter.pdf

Chad,  
The county attorney's office is denying diversion to Ms. Nicklas. Please see the attached letter.  
Thanks,  
Jeremy

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CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.





**JOE KELLY**  
LANCASTER COUNTY ATTORNEY

[www.lancaster.nc.gov/attorney](http://www.lancaster.nc.gov/attorney)

05/25/2017

Chad J. Wythers  
Attorney at Law  
2650 N. 48th Street  
Lincoln, NE 68504

RE: State vs. Michelle M. Nicklas, CCT - CR17-5489

Dear Mr. Wythers:

The application of Ms. Nicklas to enter the Lancaster County Community Corrections Pre-Trial Diversion Program has been denied. The charges alleged are reviewed for eligibility case-by-case, and it is the decision of our office that the alleged facts make this case inappropriate for the diversion program.

You have the right to appeal this decision. If you wish to file an appeal, you must send written notice to the Deputy County Attorney handling this case, and to Diversion Services to request an administrative review of the decision. The County Attorney will schedule a hearing within three weeks of your request. Administrative reviews are heard by local attorneys in private practice who have been appointed as hearing officers by the Lincoln Bar Association and who have volunteered their services. Please note that the decision of the hearing officer is advisory and is not binding on the County Attorney. The purpose of the hearing is limited to determining whether the County Attorney's decision was arbitrary and capricious.

If you have any questions, please feel free to contact me regarding this case.

Sincerely,

**JOE KELLY**  
LANCASTER COUNTY ATTORNEY

Jeremy P. Lavene  
Deputy County Attorney

From: 402 441 3604

07/18/2017 15:43

#468 P.003/004

LANCASTER COUNTY

DEPARTMENT OF

Community Corrections

John E. Erickson, M.A., Director

402-441-3600

fax: 402-441-3604

PROVIDING ALTERNATIVES TO INCARCERATION

Name of Volunteer: Michelle NicklasName of Organization: Berean Church - Vacation Bible SchoolAddress of Organization: 6400 S. 70th St.City: LincolnState: NEZip: 68516Phone Number for Organization: (402) 483-6512

VERIFICATION OF COMMUNITY SERVICE HOURS FOR DIVERSION SERVICES			
Date	Time In	Time Out	Hours Worked
6/22/17	1:00 PM	2:15 PM	1.25
6/26/17	1:00 PM	4:15 PM	3.25
6/28/17	1:00 PM	4:30 PM	3.5
6/29/17	1:00 PM	3:45 PM	2.75
6/30/17	1:00 PM	4:30 PM	3.5
7/5/17	1:00 PM	3:15 PM	2.25
7/8/17	9:00 AM	1:00 PM	4
7/9/17	1:00 PM	3:45 PM	2.75 22.25
7/14/17	12:30 PM	3:00 PM	2.5
Total hours completed for Diversion Services:			25.75

Signature of volunteer: Michelle NicklasName of employee verifying hours: Jessica L. SchmidtSignature of employee verifying hours: Jessica L. Schmidt

PRETRIAL RELEASE, HOUSE ARREST, COMMUNITY & DIVERSION SERVICES  
 633 South 9th Street, Lincoln, NE 68508, 402-441-3600  
 ADULT DRUG COURT, 555 S. 9th Street, Lincoln, NE 68508, 402-441-3612

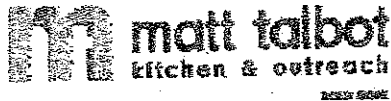
EXHIBIT

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From: 402 441 3604

07/18/2017 15:44

#468 P.004/004



2121 N. 27<sup>th</sup> St.  
Lincoln, Ne 68501  
P. 402.477.4116, 402-817-0614  
Alanna L. Hulse, PLADC  
Substance Abuse Counselor

Diversion Services  
Department of Community Corrections  
633 South 9<sup>th</sup> St.  
Lincoln, NE 68508  
PHE 402-441-1943  
FAX: 402-441-3602

ATTN: Sarah Knudson

Dear Sarah,

On June 24<sup>th</sup> & 25<sup>th</sup>, 2017, Michelle Nicklas completed our 15 hour alcohol and drug education class. She was attentive and participated appropriately. Please feel free to call with any questions.

Thank you,

Alanna L. Hulse, PLADC, 6.25.2017  
Substance Abuse Counselor

